

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: SEARS HOLDING)
CORPORATION, et al.,)
Debtor,) Case No. 18-23538(RDD)

Deposition of MISTY REDMAN OPPENKOWSKI, taken
e ELISABETH COLLOPY, CSR, RPR, and Notary
c, pursuant to the Federal Rules of Civil
dure for the United States Courts pertaining to
aking of depositions for the purpose of
very, at 3333 Beverly Road, Hoffman Estates,
ois, commencing at 11:10 a.m., on the 12th day
ril, 2019.

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2 deposition the following counsel:

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1 I N D E X

2 WITNESS

3 MISTY REDMAN OPPENKOWSKI

4 EXAMINATION BY: Page Line

5 BY MR. ATKINSON..... 5 7

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(Whereupon the witness was

duly sworn.)

MISTY REDMAN OPPENKOWSKI,

4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

EXAMINATION

BY MR. ATKINSON:

8 Q. Thank you for appearing. Are you
9 prepared to proceed?

10 A. Yes.

11 Q. I'd like to show you briefly the
12 subpoena that was issued to you. I just want to go
13 over the scope of the materials just to make sure
14 that we're on the same page in terms of what we're
15 going to be talking about today.

16 MS. MISHKIN: Are we marking it as an
17 exhibit?

18 MR. ATKINSON: I'll mark it as Exhibit 1.

19 (Oppenkowski Exhibit No. 1 marked.)

20 BY MR. ATKINSON:

21 Q. And Exhibit 1 is the subpoena issued on
22 April 9, 2019, to Misty Redman citing today for
23 deposition. Have you had an opportunities to review
24 the topics --

1 A. Yes.

2 Q. -- for examination?

3 And are you prepared to discuss
4 those topics?

5 A. The topics we've agreed to discuss, yes.

6 Q. And in terms of what we've agreed to
7 discuss are those that are itemized inside the
8 subpoena?

9 MS. MISHKIN: Object to form.

10 BY THE WITNESS:

11 A. So it's my understanding that some of
12 these topics are related to a different tax credit.

13 BY MR. ATKINSON:

14 Q. Okay.

15 A. But related to the EDA, yes.

16 Q. Okay. We discussed this a few minutes
17 ago, but could you give your name for the record?

18 A. Misty Oppenkowski. Misty Redman is my
19 maiden name. I used it at work.

20 Q. What is your current role with -- so we
21 have to clarify this too. So for purposes of our
22 deposition today, we're interested in Sears
23 before -- as it existed before filing for
24 bankruptcy.

1 A. Okay.

2 Q. So Sears Holdings. So when I use the
3 term "Sears," that's what I'm meaning. And then
4 we'll use -- I think Transform Holdco is the new
5 entity.

6 So were you employed by Sears?

7 A. Yes.

8 Q. And what was your position with Sears?

9 A. Divisional vice president of government
10 affairs.

11 Q. How long were you in that position?

12 A. Just under 15 years.

13 Q. And what was your -- obviously, I
14 imagine your role shifted somewhat during the
15 15 years. Since 2012, could you tell us briefly
16 what your role and responsibilities were?

17 A. Yeah. I've been in the same role the
18 whole time. I'm the head of government affairs. So
19 it's my responsibility to monitor legislation, lobby
20 for the company, manage outside retail associations
21 and lobbyists and things like that.

22 Q. And are you familiar with the -- I'm
23 going to use the long statutory name. Are you
24 familiar with the Illinois Economic Development Area

1 Tax Increment Allocation Act?

2 A. Yes.

3 Q. How are you familiar with that act?

4 A. I was part of the team that worked on it
5 back when we extended it in 2011.

6 Q. Does that -- to your knowledge, does
7 that act provide any financial benefits to Sears?

8 A. Provided we meet certain thresholds,
9 yes.

10 Q. And can -- you've alluded to this
11 already, but what requirements does the act place on
12 Sears to receive benefits under the EDA act?

13 MS. MISHKIN: Object to form.

14 BY THE WITNESS:

15 A. I'm not an attorney. It's my not job to
16 interpret the statute, and there are a lot of things
17 in it. But at a high level, obviously, there is the
18 head count threshold. And it was meant to reimburse
19 us for the infrastructure that we paid for out here
20 in '92 when we moved out here.

21 BY MR. ATKINSON:

22 Q. In your role as vice president of
23 governmental affairs?

24 A. Divisional vice president. I don't have

1 the vice president.

2 Q. Okay. So in that role, did you have any
3 responsibilities in calendar year 2017 regarding the
4 tracking of Sears job counts?

5 A. Not the tracking.

6 Q. What were your responsibilities in
7 calendar year 2017 regarding the job counts?

8 A. I'm the liaison to government officials
9 on the topic, so I was copied on things.

10 Q. Are you familiar with the declaration
11 that was filed by Mohsin Meghji, who was the chief
12 restructuring officer for Sears in this matter?

13 MS. MISHKIN: Objection. I mean, it's fine.
14 You can ask how you want. Mo's filed a lot of
15 declarations in the Chapter 11. I think I
16 understand and I think we understand, but if you
17 want to clarify that it's with respect to the topics
18 we're here on today, it might be a little cleaner.

19 MR. ATKINSON: I have that declaration as an
20 exhibit and we'll be referring to that today. But
21 for the record we're referring to the declaration of
22 Mohsin Meghji that was filed on February 28, 2019.
23 Is that specific enough?

24 MS. MISHKIN: I think so. It's your

1 question.

2 MR. ATKINSON: I'd like to show you what I --
3 we're going to mark as Exhibit 2.

4 (Oppenkowski Exhibit No. 2 marked.)

5 BY MR. ATKINSON:

6 Q. For the record, this is a copy of the
7 declaration in all parts but excluding the names of
8 individual employees in the Edge job counts. Does
9 that make sense to you?

10 A. Can you restate that? Sorry.

11 Q. So this declaration is complete other
12 than omitting the list of names of individual
13 employees.

14 A. Gotcha.

15 Q. Then it would be like 700 pages. And I
16 don't have questions about the individual employee
17 names or the Edge counts in terms of anything that
18 that list would be required for.

19 A. Okay.

20 Q. But if you were to need it, we could
21 certainly provide it.

22 So how are you familiar with
23 Exhibit 2, the declaration of Mr. Meghji?

24 MS. MISHKIN: Object to form.

1 BY THE WITNESS:

2 A. I read through one time. I skimmed it.

3 BY MR. ATKINSON:

4 Q. Okay. Did you help Mr. Meghji at all in
5 providing him data?

6 A. I did.

7 Q. Could you provide just a brief
8 explanation of how you assisted him in preparing
9 this declaration?

10 A. Most of the work that I did was
11 probably -- was with attorneys. So, you know, I
12 just answered some questions based on information
13 that had been requested, I think by you all.

14 Q. Okay.

15 A. And provided that to them.

16 Q. Okay. And did you consult with anyone
17 in your efforts to assist Mr. Meghji or Sears with
18 the preparation of that declaration?

19 A. Other than reviewing old documents that
20 I had gotten from other people before, no.

21 Q. Okay. Can you identify the attorney or
22 attorneys that you spoke with regarding the
23 preparation of the declaration?

24 A. Sure. So Jessie. Jared Friedmann.

1 David Leslie from Weil. And Dave Martin, who is our
2 local outside counsel.

3 Q. Okay. Did you have any conversations
4 with Mr. Meghji related to the preparation of his
5 declaration?

6 A. He was on one call.

7 Q. And --

8 A. We did not talk.

9 Q. Okay. Do you recall when or about that
10 was?

11 A. The week before he did his deposition.

12 Q. Okay.

13 A. I believe.

14 Q. Early April-ish?

15 A. I believe so.

16 Q. Okay. So prior to the preparation of
17 the declaration, did you have any conversations with
18 Mr. Meghji?

19 A. Not directly.

20 Q. What do you mean by that?

21 A. The only conversations I had with him
22 were on the call with the attorneys.

23 Q. Okay. And the -- was there just that
24 one call or were there multiple calls with

1 Mr. Meghji beyond the declaration at this point?

2 A. One that I was on.

3 Q. Okay. And was that prior to preparing
4 the declaration? I think you said in early April
5 right, prior to the --

6 A. It was either late March or early April,
7 because I think his deposition -- but that's when we
8 had direct contact.

9 Q. I'm going to go through with you now
10 portions of Mr. Meghji's declaration if that's okay.
11 So if I can direct you to paragraph 7 of
12 Mr. Meghji's declaration, it says that at the
13 request of the Village of Hoffman Estates, the
14 Debtors provided the Village with letters certifying
15 that at no time in 2017 did the requisite number of
16 jobs at the Hoffman Estates campus dip below the
17 requisite 4,250 jobs.

18 Is that correct in terms of what he
19 declared in paragraph 7?

20 MS. MISHKIN: Object to form. Just for the
21 record, I'm not asking you to read the whole thing,
22 but just for the record you ellipsed some clauses
23 from that paragraph.

24 THE WITNESS: So just to clarify, you're

1 asking me to say is that true that at no time in
2 2017? Is that --

3 MS. MISHKIN: I don't think that's what
4 you're asking. Do you want to ask your question
5 again, Kory?

6 BY MR. ATKINSON:

7 Q. So does paragraph 7 of Mr. Meghji's
8 declaration indicate that at the request of the
9 Village of Hoffman Estates that the debtors provided
10 the Village with letters regarding the EDA
11 distribution for 2017 certifying that at no time
12 that they fell below the 4,250 jobs?

13 MS. MISHKIN: Object to form. You're asking
14 her if Mos' declaration says that.

15 MR. ATKINSON: That is what I'm asking her,
16 if that's what the declaration says.

17 BY THE WITNESS:

18 A. I'm reading it right now. That's what
19 it says.

20 BY MR. ATKINSON:

21 Q. Do you know how the Village made this
22 request to Sears?

23 A. Well, they were made through two
24 different people because they were for two different

1 years. So the first letter went to John Bredemeier,
2 who was a director in real estate. And the second
3 letter also went to John Bredemeier because it was
4 before he left.

5 Q. Do you know on or about when he left
6 Sears?

7 A. I can't recall the exact date, but it
8 would have been shortly after we received the second
9 letter.

10 Q. Okay. Do you know where we could find
11 him?

12 A. No.

13 Q. I'm going to show you what we're going
14 to mark as Exhibit 3.

15 (Oppenkowski Exhibit No. 3 marked.)
16 BY MR. ATKINSON:

17 Q. Do you recognize Exhibit 3?

18 A. Yes.

19 Q. What do you recognize it to be?

20 A. The certification letter from 2017 --
21 that we received in 2017.

22 Q. And in reviewing this letter, is it
23 accurate to say that the Village is requesting
24 certification that 4,250 jobs were maintained at the

1 Sears Holding Corporation campus during calendar
2 year 2017?

3 A. Yes.

4 Q. And is it accurate to say that the
5 Village requests certification by December 1, 2017?

6 A. Yes.

7 Q. So referring now to -- back to
8 Exhibit 2, which is the Meghji declaration, and this
9 is going to be Exhibit 15 of his declaration. Are
10 you familiar Exhibit 15 of Exhibit 2?

11 A. Yes.

12 Q. And what do you recognize this exhibit
13 to be?

14 A. The company's response to the
15 November 7th letter.

16 Q. And is it accurate to say that this
17 letter certified the number of EDA jobs for calendar
18 year 2017?

19 MS. MISHKIN: Object to form.

20 BY THE WITNESS:

21 A. It doesn't certify the number of jobs.
22 It just certifies that we were above.

23 BY MR. ATKINSON:

24 Q. Okay. During what year?

1 A. In the year that the Village requested,
2 which was 2017.

3 Q. For clarity purposes, it's calendar year
4 2017?

5 A. Yes.

6 Q. So -- looking at these two exhibits, the
7 Village requesting certification for 2017 and Sears
8 responding to this request with a certification with
9 2017 jobs, do you know why -- let's strike that.

10 I'm going to show you now
11 Exhibit 16 which is in Exhibit 2. Do you recognize
12 this exhibit?

13 A. Yes.

14 Q. And what do you recognize it to be?

15 A. It was the response to the certification
16 request for -- that we received in 2018.

17 Q. And is it accurate to say, first, this
18 letter is responding, I think you just said, to a
19 letter received from the Village dated November 14,
20 2018; is that correct?

21 A. Do I have that one? I don't remember
22 the exact date unless you gave me that one.

23 Q. I've not given it to you yet.

24 A. Okay.

1 Q. I'm just going on the Exhibit 16.

2 A. Oh, it says right here. Okay.

3 Q. Is it accurate to say that Exhibit 16 is
4 saying that Sears had no fewer than 4,250 jobs
5 during calendar year 2017?

6 A. Right.

7 Q. I'd like to show you now what we're
8 going to mark as Exhibit 4.

9 (Oppenkowski Exhibit No. 4 marked.)

10 BY MR. ATKINSON:

11 Q. Do you recognize Exhibit 4?

12 A. Yes.

13 Q. What do you recognize it to be?

14 A. This was their request for the -- for
15 certification that we received in 2018.

16 Q. And when you say "their," the Village of
17 Hoffman Estates?

18 A. Yes.

19 MS. MISHKIN: You just have to let him finish
20 the question so you're not talking over each other
21 because Lisa cannot then capture both people talking
22 at the same time.

23 BY MR. ATKINSON:

24 Q. So in looking at Exhibit 4, is it

1 accurate to say that the Village of Hoffman Estates
2 is requesting certification as to the number of jobs
3 pertaining to the 2018 calendar year?

4 MS. MISHKIN: Object to form.

5 BY THE WITNESS:

6 A. Yes. But I would like to expound on
7 this if I could.

8 BY MR. ATKINSON:

9 Q. Please.

10 A. So in the prior year -- in the 2017
11 certification, that was the first certification that
12 had come across my desk. We were obviously above.
13 We answered what the Village requested we answer.

14 For this one, we were working with
15 outside counsel on a related but separate topic.
16 And after discussions -- which obviously I won't get
17 into what we talked about with outside counsel
18 because it's privileged -- the company made the
19 determination that we should be responding for 2017
20 because that's when the taxes were levied.

21 I think I can also say that our
22 outside counsel spoke with the Village's outside
23 counsel to make sure they understood that that was
24 what we were going to do before we responded.

1 Q. Do you know when this conversation
2 occurred?

3 A. I don't know the exact date, but it was
4 sometime in between when we got the letter and when
5 we responded.

6 Q. That would be after the bankruptcy
7 filing by Sears?

8 A. Yes.

9 Q. Do you know who decided to change the
10 reporting year in terms of -- let me back up and
11 clarify my question a little better.

12 You testified a moment ago that the
13 17 certification was just a response to what the
14 Village was asking you for?

15 A. Right.

16 Q. And then 2018 there were discussions
17 that -- from Sears or whomever that the reporting
18 year needed to change. Was that decision made just
19 by Sears?

20 MS. MISHKIN: I object to the form of the
21 question to the extent it mischaracterizes her
22 testimony.

23 THE WITNESS: Can you restate the question?
24

1 BY MR. ATKINSON:

2 Q. Sure. I'm just trying to lay the table
3 in terms of the question I'm going to ask.

4 So I believe you testified a moment
5 ago that the -- that Sears responded to the 2017
6 letter from Hoffman Estates saying we have more than
7 4,250 jobs for 2017; that that was done because
8 that's what the Village requested and you were just
9 providing what the Village had requested?

10 A. Right.

11 Q. Then in 2018, the Village sends a letter
12 to Sears saying please certify the number of jobs
13 for 2018. And Sears responds back with a letter
14 saying this is how many jobs we had for '17; is that
15 correct?

16 A. Correct.

17 Q. And that at some point in time after
18 Sears received the 2018 letter from the Village of
19 Hoffman Estates, a determination was made that Sears
20 would respond back with '17 jobs; is that correct?

21 A. The determination was made by the
22 company after speaking with outside counsel -- which
23 obviously I can't get into what we discussed; it's
24 privileged -- that we had provided -- we had been

1 asked for and provided the wrong year data for the
2 prior year and that we should have -- that we should
3 be giving 2017 for the 2018 request.

4 Q. Prior to the response from Sears in
5 January of 2019, did Sears have any conversations
6 with representatives of the Village of Hoffman
7 Estates concerning the proper measuring year?

8 A. Our outside counsel spoke with their
9 counsel.

10 Q. Do you know when?

11 A. I don't know the exact date.

12 Q. And do you know what representatives
13 from the Village of Hoffman Estates said during the
14 course of that consultation?

15 MS. MISHKIN: I'm going to instruct the
16 witness to answer that only to the extent she has an
17 understanding separate from advice she received from
18 counsel.

19 BY THE WITNESS:

20 A. I only know from counsel.

21 BY MR. ATKINSON:

22 Q. And to clarify, this occurred after --
23 can you tell us what information was passed along
24 from representatives from Hoffman Estates to the

1 attorneys for Sears?

2 A. I don't know if I feel comfortable
3 speaking on behalf of the attorney of the village,
4 however.

5 Q. You're not speaking on his behalf.
6 You're just conveying what information was received
7 by you in the course of interacting with these
8 different individuals.

9 MS. MISHKIN: So let me just give you an
10 instruction. You can answer that if you're able to
11 separate from also disclosing legal advice that the
12 lawyers gave you, your lawyers gave you.

13 THE WITNESS: Okay.

14 MS. MISHKIN: If there was just a conveyance
15 of a fact without additional legal advice being
16 conveyed at the same time, you could answer that.
17 But if, you know, a fact was being conveyed to you
18 in the course of providing legal advice, I instruct
19 you not to answer.

20 MR. FLOREY: Perfectly clear, right?

21 THE WITNESS: I'd rather not answer it.

22 BY MR. ATKINSON:

23 Q. Okay. I want to turn now to Exhibit 13
24 of Exhibit 2, which is the Meghji declaration.

1 MS. MISHKIN: Which one?

2 MR. ATKINSON: Number 13.

3 BY MR. ATKINSON:

4 Q. Do you recognize Exhibit 13?

5 A. Yes.

6 Q. And what do you recognize it to be?

7 A. This is the report that the real estate
8 team prepared on badge counts to help the finance
9 team create the head count number. I saw this
10 information when I passed it along for purposes of
11 this litigation. I did not see it before that
12 point.

13 Q. Do you know if this report was prepared
14 for litigation?

15 A. No. Yes, I do. It was not.

16 Q. Just to make sure -- I want to make sure
17 the record is clear. So you do know whether or not
18 it was prepared for purposes of litigation?

19 A. Yes.

20 Q. And was it prepared for the purpose of
21 litigation?

22 A. No.

23 Q. And just so I'm clear, you testified a
24 moment ago that you did not see this document prior

1 to the current litigation involving the disputed
2 funds in this case; is that correct?

3 A. Correct.

4 Q. Do you know who prepared Exhibit 13?

5 A. I believe it was Jennifer Mendoza.

6 Q. And she was with the real estate
7 division?

8 A. Correct.

9 Q. Do you know if anybody else worked on it
10 other than Jennifer?

11 A. So she sent it to her boss, who was -- I
12 think her boss, who was John Bredemeier.

13 Q. Okay.

14 A. John Bredemeier provided it to a woman
15 by the name of Amita Agarwal, who was in finance who
16 was -- had taken on the responsibility of sort of
17 meshing all of the numbers together to make sure we
18 were coming to a correct counts.

19 Q. Is Amita still employed by Sears?

20 A. No.

21 Q. Do you know where we could find her?

22 A. No.

23 Q. When did she leave Sears?

24 A. I don't recall exactly.

1 Q. Do you know if it was before the
2 bankruptcy or after the filing?

3 A. I do not.

4 Q. Do you know what methods or processes
5 were used in preparing Exhibit 13?

6 MS. MISHKIN: Object to form.

7 BY THE WITNESS:

8 A. No.

9 BY MR. ATKINSON:

10 Q. Do you know when it was prepared?

11 A. No.

12 Q. So I'm going to go through Exhibit 13
13 and I'm anticipating that many of your answers maybe
14 that you don't know, and that's okay. But I just
15 need to establish whether you're able to assist us
16 with understanding what is actually reported in
17 Exhibit 13.

18 So on Exhibit 13, for clarity
19 purposes, I'm looking at column A, line 3. It says
20 Occupant Entries. Do you know what an occupant
21 entry is?

22 MS. MISHKIN: Object to form.

23 BY THE WITNESS:

24 A. So on this one, only to the extent that

1 I'm an associate here for a long time and I know
2 sort of the protocol for coming in and out of the
3 building.

4 BY MR. ATKINSON:

5 Q. Okay.

6 A. You know, when you come into the
7 building, there are security guards; and if you're
8 an associate, you're required to show them your
9 badge. If you're a contractor, I believe you swipe
10 your badge. So, you know, that's what that is.

11 I don't know that it's a perfect
12 system. It also says on this form that it's from
13 6:00 to 11:00, which isn't the whole day. So that's
14 about what I know about that. And that's my
15 associate opinion.

16 Q. Okay.

17 MS. MISHKIN: Kory, if we're going to spent a
18 long time on the document, would it be okay if we
19 take a short break?

20 MR. ATKINSON: Sure. And I meant to stay at
21 the outset, if you need a break at any time, please
22 don't hesitate. We'll fully accommodate whatever
23 breaks are needed during the course of the
24 deposition.

1 (Break taken.)

2 (Whereupon Ms. Nusra Ismail
3 entered the deposition room.)

4 BY MR. ATKINSON:

5 Q. I'd like to, if I may take a moment and
6 go back to something we talked about a few moments
7 ago about your conversations with Mr. Meghji in
8 terms of the conversations that you had with him.

9 I guess, other than the phone
10 conference you said that you had with him in late
11 March or early April of 2019, is there any other
12 occasion where you talked to him?

13 A. About anything?

14 Q. Yes.

15 A. I was on an e-mail exchange with him
16 once, but otherwise no.

17 Q. Okay. Can I ask -- well, I can ask.
18 Did you ever advise Mr. Meghji regarding the
19 eligibility for Sears for the EDA incentive for
20 2018?

21 A. No.

22 Q. So you never said to him that Sears had
23 more than 4,250 jobs for calendar year 2018?

24 MS. MISHKIN: Object to form.

1 BY THE WITNESS:

2 A. No.

3 BY MR. ATKINSON:

4 Q. Your answer is?

5 A. No.

6 Q. How about for 2017? Did you ever advise
7 Mr. Meghji that Sears had 4,250 jobs for calendar
8 year 2017?

9 A. To the extent I advised him through our
10 counsel.

11 Q. And I believe you testified earlier that
12 you provided -- or the -- let me back up for a
13 moment.

14 I think you testified earlier that
15 the extent of that communication was you providing
16 documents that were provided by others to you; is
17 that correct?

18 MS. MISHKIN: Object to form.

19 BY THE WITNESS:

20 A. I provided those documents, but I also
21 had conversations about whether or not we were above
22 with counsel. I can't talk about all the things we
23 talked about with counsel.

24

1 BY MR. ATKINSON:

2 Q. Is there anyone other than counsel you
3 talked to about that topic, specifically eligibility
4 for the number of jobs in 2017?

5 A. I've had numerous conversations over the
6 years about it since 2017 with various people
7 internally. It's a pretty broad question.

8 Q. What about Mr. Meghji, if I can bring it
9 back to that. In terms of advising Mr. Meghji, are
10 there other people that you talked to to inform
11 Mr. Meghji as to the eligibility of the number of
12 jobs for 2017?

13 MS. MISHKIN: Object to form.

14 BY THE WITNESS:

15 A. The same answer. I spoke with outside
16 counsel, and he was on one of those calls.

17 BY MR. ATKINSON:

18 Q. So going back, then, to the phone call
19 that you on with Mr. Meghji in late March or early
20 April 2019, do you recall who all was on that call?

21 A. I believe I answered this already, but
22 it was, I believe, Jared Friedmann, Jessie, David
23 Leslie, David Martin, Mo, myself, and then Drew
24 Farkas, who is here with me in the law department.

1 Q. And do you recall the duration of that
2 telephone call?

3 A. Less than an hour.

4 Q. And do you know when Transform Holdco
5 acquired or purchased Sears?

6 A. I don't remember the exact date. I
7 don't have it in front of me.

8 Q. Was that before March -- late March
9 2019?

10 A. Yes.

11 Q. And then do you know the number of times
12 that representatives or counsel from Sears had
13 conversations with representatives or counsel from
14 the Village of Hoffman Estates concerning the jobs
15 requirement for the letter that was prepared in
16 January of 2019?

17 MS. MISHKIN: Object to form.

18 BY THE WITNESS:

19 A. Do I know how many times conversations
20 were had with the Village between the company and
21 the Village on that letter? Is that what you're
22 asking?

23 BY MR. ATKINSON:

24 Q. Before that letter was sent, so prior to

1 January 2nd of 2019.

2 A. No.

3 Q. I'm sorry to bounce back to this. The
4 conference call that you had with Mr. Meghji and
5 others in late March, early April 2019, do you
6 recall how long you talked on that particular call?

7 MS. MISHKIN: Object to form. Asked and
8 answered.

9 THE WITNESS: How long I personally spoke?

10 BY MR. ATKINSON:

11 Q. Yes.

12 A. I don't know.

13 Q. Could you estimate?

14 A. No.

15 Q. Would you say out of the hour long
16 conversation, did you talk for 30 minutes?

17 A. I was doing a lot of the talking. I
18 can't tell you how long I was talking.

19 Q. I'm going to take you back to
20 Exhibit 13.

21 MS. MISHKIN: Do you have an extra copy?

22 BY MR. ATKINSON:

23 Q. So before the break, I asked you about
24 occupant entries. If I were to ask you for occupant

1 entries, there are a series of numbers that are
2 reported per month for those different categories.
3 If I were to ask you how those numbers were
4 calculated, would you be able to answer that
5 question?

6 A. No.

7 Q. Do you know who would be able to answer
8 that question?

9 A. No.

10 Q. I think you said that Jennifer Mendoza
11 perhaps either prepared or had a role in preparing
12 this report. Do you think she would be able to
13 understand or -- excuse me. Do you think she'd be
14 able to answer questions as to how those numbers
15 were calculated?

16 A. I would guess so. I've never spoken
17 with her about it.

18 Q. So I'm going to go through and I'm
19 expecting your answers to be "I don't know," and
20 that's okay. I just need to establish that for the
21 record.

22 So the next item is parking. Do
23 you know how -- well, first, do you know what the --
24 looking at Column A, Row 9 says Parking Spaces

1 Vacant, Average Per Day. Do you know what that
2 classification means?

3 A. No.

4 Q. If I were to ask you how those numbers
5 were calculated, would you be able to answer that
6 question?

7 A. No.

8 Q. And I apologize. I can't remember if I
9 went through these three for Occupant Entries at the
10 top, so I'm just going to cruise through those real
11 fast if that's okay.

12 Daily Entry Counts, 6:00 to
13 11:00 a.m. If I were to ask you specifically what
14 that means, would you be able to answer that
15 question?

16 A. Not as a person who works in the
17 department that controls badge swipes, no.

18 Q. And if I were to ask you how that number
19 was calculated, would you be able to tell me?

20 A. No.

21 Q. And that same question, Daily Contractor
22 Swipes, 6:00 to 11:00 a.m. Would you be able to
23 answer questions as to what that means?

24 A. No.

1 Q. And the numbers, you wouldn't know how
2 they're calculated?

3 A. No.

4 Q. And then Daily Associate Counts. You
5 mentioned because you work here you know what an
6 associate is, but if I were to ask you how -- what
7 that classification actually means specifically,
8 would you be able to answer that question?

9 A. Again, no. Not as a person who is
10 responsible for this, no.

11 Q. Okay. And you wouldn't be able to
12 answer questions as to how the numbers were
13 calculated; is that correct?

14 A. Correct.

15 Q. The next series I'd like to ask briefly
16 about starting with Column A, Row 12, Active Badges.
17 Do you know what an active badge is as it would be
18 reported in this report?

19 A. No.

20 Q. And the numbers that are reported there,
21 you wouldn't know how those are calculated?

22 A. No.

23 Q. Just for clarity of the record, if I
24 were to ask you how the number of associate badges

1 are calculated, would you be able to answer that
2 question?

3 A. No.

4 Q. If I were to ask you how active
5 contractor badges were calculated, would you be able
6 to answer that question?

7 A. No.

8 Q. Further down it says Office Spaces.
9 Sorry. I'm going to go back to Column A Row 17,
10 Sears Tenant Badges. Do you know what that is
11 within the meaning of this report?

12 MS. MISHKIN: Ken, it's not too late to be a
13 litigator. You could ask the questions.

14 BY MR. ATKINSON:

15 Q. So I'm going to step back for a moment.
16 Column A, Line 16, Sears Field Badges. Do you know
17 what that means within this report?

18 A. No.

19 Q. And do you know how those numbers were
20 calculated?

21 A. No.

22 Q. Next row, Column A, Row 17, Tenant
23 Badges. Do you know what that means within the
24 context of this report?

1 A. We have a lot of companies here that,
2 you know, lease space or are here working for us in
3 some capacity but not directly. That would be the
4 meaning of the word "tenant," but not the
5 calculations, no.

6 Q. So within the context of this report, if
7 I were to ask you what the specific meaning of
8 tenant badges is, could you tell me that?

9 A. Not officially, no.

10 Q. Then Column A, Row 18, OTB Contractor
11 Badge. Do you know what OTB means?

12 A. Yeah. It means office of the building.

13 Q. And within the context of this report,
14 could you tell me specifically what that term means?

15 A. So office of the building is an internal
16 department here within the real estate function, and
17 they have management over lots of contractors like
18 the people that clean the building, the security
19 people, all of those. So I imagine that's what
20 those go back to.

21 Q. Okay. And then specifically with
22 Column A, Row 18, it says OTB Contractor Badges.
23 Within the context of this report, can you tell me
24 specifically what that term means?

1 A. Not specifically, no.

2 Q. And do you know how those numbers were
3 calculated?

4 A. No.

5 Q. Now, Column A, Row 23 says FT Occupied
6 Seats. Do you know what that means in the context
7 of this report?

8 A. I'm going to abstain from guessing.

9 Q. Do you know?

10 A. No.

11 Q. No is an acceptable answer.

12 A. Okay.

13 Q. Presumably because don't know, you don't
14 know how those numbers were calculated that were
15 reported on this?

16 A. Correct.

17 Q. Next, Column A, Row 24, FT Unoccupied
18 Seats. Do you know what that means within the
19 context of this of this report?

20 A. No.

21 Q. Do you know how those numbers were
22 calculated?

23 A. No.

24 Q. Column A, Row 30 says Jennifer's Notes.

1 Do you know who Jennifer is?

2 A. I know who she is. I've never met her.

3 Q. Do you know her last name?

4 A. Jennifer Mendoza.

5 Q. So I'm going to hop down to Column A,
6 Row 34, and this is one of Jennifer's -- it appears
7 to be one of Jennifer's notes. And it says,
8 "July 2016 associate badge count - noticing several
9 people with multiple badges. I was unable to
10 visually scan the list to delete those that I
11 recognized as a duplicate = 22 additional duplicate
12 badges removed."

13 MS. MISHKIN: Objection. You read it wrong,
14 Kory.

15 MR. FLOREY: Read it again.

16 BY MR. ATKINSON:

17 Q. Column A Line 34, "July 2016 associate
18 badge count - noticing several people with multiple
19 badges. I was able to visually scan the list to
20 delete those that I recognized as a duplicate = 22
21 additional duplicate badges removed." Is that
22 correct?

23 A. That's what I read as well.

24 Q. Do you know what procedures or efforts

1 were taken to control for the number of badges
2 issued to employees?

3 A. No.

4 Q. Do you know what steps Jennifer took, if
5 any, beyond a visual scan to detect duplicate
6 badges?

7 A. No.

8 Q. Using -- I'm going to use February --
9 I'm going to go back to Jennifer's notes for a
10 moment. Column A, Line 33, it says, "Per Chuck
11 Jones, we are not getting counts now due to our IT
12 changing servers and then the vendor changed
13 servers. I believe iVisitor is getting updated but
14 we don't know for sure since we are not getting the
15 daily update counts. Debbie, I believe is looking
16 into it." Is that correct?

17 A. Yes.

18 Q. Do you know who Debbie is?

19 A. No.

20 Q. Do you know who Chuck Jones is?

21 A. No.

22 Q. Do you know whether the issues regarding
23 getting counts was ever corrected?

24 MS. MISHKIN: Object to form.

1 BY THE WITNESS:

2 A. No.

3 BY MR. ATKINSON:

4 Q. I'd like to use February 2017 in
5 Exhibit 13 as an example to use. And I promise I'm
6 not going to go year by year or month by month. So
7 I'm going to use February '17 as an example.

8 So looking at February 2017, which
9 is in Column AB of Exhibit 13, and I'm going to look
10 at Row 13 and it has -- I'm going to -- I'm going to
11 ask you if that column reports that there were 4,512
12 associate badges -- active associates badges in
13 February of 2017?

14 A. Yes.

15 Q. Same column going higher. This is under
16 Occupant Entries, and can you tell me if the number
17 of daily associate counts 6:00 to 11:00 was 1,926?

18 A. So you're talking about Line 6?

19 Q. That's correct.

20 A. Only? Correct.

21 Q. Can you explain the difference between
22 the number of active badges for associates in
23 February of 2017 and the number of daily associate
24 counts for February of 2017?

1 MS. MISHKIN: Object to form.

2 BY THE WITNESS:

3 A. No.

4 BY MR. ATKINSON:

5 Q. Exhibit 13 here does not have --
6 actually, let me take a step back.

7 If I were to ask that question for
8 every month, would your answer be the same?

9 MS. MISHKIN: Object to form.

10 BY THE WITNESS:

11 A. Yes.

12 BY MR. ATKINSON:

13 Q. I'm just trying to avoid going through
14 eight or nine months of data where your answer is
15 going to be exactly the same.

16 A. I cannot speak to the difference between
17 the two. I did not create this report and I don't
18 track them.

19 Q. Okay. So Exhibit 13 stops reporting
20 data starting in September 2017; is that correct?

21 A. Can you restate? I'm sorry.

22 Q. So Exhibit 13 starting in
23 September 2017, so I'm looking at column AI, does
24 the report stop reporting data starting in September

1 '17 and going through December '17?

2 A. I don't know.

3 Q. Well, is there any data reported in
4 Exhibit 13 for the months --

5 A. Oh, no.

6 Q. I promise it's not a trick question.
7 I'm just asking.

8 A. No.

9 Q. Do you know why that is?

10 A. I don't want to guess. I mean, I assume
11 that this document was from before that. But I
12 can't -- I don't know that for sure.

13 Q. Okay. So the question do you know, the
14 answer is?

15 A. No.

16 Q. So sticking with Exhibit 13 and looking,
17 again, at the active badge count for tenants,
18 contractors, and OTB contractors, does Sears know
19 who those people are?

20 MS. MISHKIN: Object to form.

21 BY THE WITNESS:

22 A. I'm not in the departments that monitor
23 that, so I couldn't answer that.

24

1 BY MR. ATKINSON:

2 Q. Do you know whether those individuals
3 work or worked 35 hours or more per week?

4 MS. MISHKIN: Object to form. I'm not clear
5 who you're asking about.

6 BY MR. ATKINSON:

7 Q. So for the record, I'm asking about
8 active badges for associates. And for clarity,
9 we'll stick with February of 2017 because that's our
10 example month. We'll do it one at a time.

11 So contractor badges, so we're
12 looking at A13 and AB13. Do you know who the
13 individuals are that -- let me -- I'm going to try
14 that again. I apologize.

15 Tenant badges, February 2017
16 reports that there are 464 tenant badges; is that
17 correct? Just for clarity, I'm looking at Column
18 AB, Line 17.

19 A. I see 506. Is that what you said? Oh,
20 no. Sorry. 464. You're right.

21 Q. Do you know who those 464 people are?

22 A. No.

23 Q. Do you know if Sears has records of who
24 they are?

1 A. No, because I'm not in HR or office of
2 the building.

3 Q. Do you know whether those 464 people --
4 each of those 464 people worked 35 hours or more per
5 week?

6 A. No.

7 Q. Do you know if Sears has records
8 indicating that those people worked 35 hours or more
9 per week?

10 A. So what I can say is this was not the
11 final number. So Amita in finance was responsible
12 for taking this information and scrubbing it with
13 her information to make sure we were only including
14 people with the right criteria, which should have
15 scrubbed out any part-timers. So this number is not
16 the last number that we used.

17 Q. Okay. If it's okay, let me focus on
18 that for a moment then. Do you know whether this
19 was -- whether this was an initial report that was
20 used to start a scrubbing process to get to a final
21 number?

22 A. Yes.

23 Q. And do you know what data -- and I think
24 you said Amita. Is that Amita Argarwal?

1 A. Yes.

2 Q. Do you know what steps she used to scrub
3 that data?

4 A. No.

5 Q. Do you know if Sears has Amita's final
6 reports for each of these months or for the -- I'll
7 ask them one at a time. For each of these months?

8 A. We provided what Amita prepared for this
9 litigation. I believe it's in the materials.

10 MR. FLOREY: Can we go off the record?

11 (Discussion had off the record.)

12 BY MR. ATKINSON:

13 Q. So you testified a moment ago that
14 Exhibit 13 was an initial report of occupant
15 entries, active badges, et cetera, and that Amita
16 Argarwal then took that data and scrubbed it; is
17 that correct.

18 A. Yes.

19 Q. And then Amita produced a final report;
20 is that correct?

21 A. That is correct. However, in February
22 of 2017, we were far above the number using only the
23 EDGE data. So we did not necessarily need to be
24 tracking additional associates in the building at

1 that time.

2 Q. So when did you start tracking other
3 people other than Sears employees for the purposes
4 of the EDA?

5 A. I don't remember the exact date when
6 everybody was pulled together to make sure we were
7 tracking everybody. But if you look at the EDGE --
8 I believe you have all the EDGE documents. You can
9 see when that number dips. And so that's why you're
10 only seeing tracking come at a certain time in the
11 year.

12 Q. Now, Exhibit 13 predates 2017?

13 MS. MISHKIN: Object to form. I'm sorry,
14 Kory. I keep mishearing. We're talking about 13
15 again?

16 MR. ATKINSON: We are. Exhibit 13.

17 BY THE WITNESS:

18 A. The only way for me to speak to that
19 is -- because I'm not in that department -- is just
20 to say that some of this information is stuff that
21 we would track for other purposes.

22 BY MR. ATKINSON:

23 Q. Okay. What purposes would they have
24 been tracked for previously?

1 A. I don't know, but the EDA, we wouldn't
2 have necessarily needed to track swipes, you know,
3 for the EDA, for example. But, again, I'm not in
4 this department.

5 Q. Who would we talk to, if you know, that
6 would be able to tell us about that?

7 A. I don't know.

8 Q. So I apologize. We have to go month by
9 month here. So starting in January 2017, so
10 Exhibit 13, reports a series of numbers for
11 associates, contractors, and others; is that
12 correct?

13 A. Yes.

14 Q. And this was a preliminary report?

15 A. Can you restate that question?

16 Q. Is this a preliminary report of those
17 counts for January 2017?

18 MS. MISHKIN: Object to form.

19 BY THE WITNESS:

20 A. It's not a final number for EDA
21 purposes.

22 BY MR. ATKINSON:

23 Q. Are you familiar with Exhibit 2, which
24 is the declaration of Mr. Meghji? I should have

1 stuck with letters.

2 So the Exhibit 2 is the total and
3 then -- is the entirety of Mr. Meghji's declaration.
4 Are you familiar with that declaration and the
5 exhibits attached to it?

6 A. To the extent I've looked at them,
7 skimmed them, whatever, yes.

8 Q. Do you know if there is a final report
9 from Ms. Argarwal pertaining to the numbers of
10 associates, tenants, and contractors for
11 January 2017 contained in the Meghji declaration?

12 A. For January of 2017?

13 Q. Correct.

14 A. I don't know.

15 Q. If I were to ask you that question for
16 each of the succeed succeeding months through
17 October 2017, would your answer be the same?

18 A. Yes. But I just want to clarify that
19 I'm not -- I just don't remember when Amita started
20 tracking this off the top of my head. I'd have
21 to -- you know. But I know that it was somewhere
22 around the time that the EDGE reports -- we weren't
23 way above.

24 Q. So then let me ask you this. If I

1 wanted to estimate the number of non-Sears employees
2 for EDA purposes, could I reliably use Exhibit 13 to
3 report an accurate figure?

4 A. I don't know because I didn't create
5 that document.

6 Q. Now, you testified a while ago that
7 Exhibit 13 would have been provided to Ms. Argarwal.
8 She would have scrubbed it -- excuse me -- she would
9 have -- I'm blanking on the word you used.
10 Reconciled it or whatever.

11 So would you feel comfortable --
12 knowing the processes that Ms. Argarwal used, would
13 you feel comfortable relying on Exhibit 13 to
14 produce an accurate precise number as to the number
15 of tenants, contractors, and OTB contractors?

16 MS. MISHKIN: Object to form.

17 BY THE WITNESS:

18 A. I relied on my business people. I don't
19 work in those functions, so I can't make a
20 determination on that.

21 BY MR. ATKINSON:

22 Q. But knowing what you know, if I came to
23 you and said, Sears, can say how many non-employees
24 were here for EDGE purposes, by adding the numbers

1 of active badges for tenants, contractors, and OTB
2 contractors, would you accept that number?

3 MS. MISHKIN: Don't answer. I'm objecting to
4 the form of that question because you asked about
5 EDGE.

6 MR. ATKINSON: I apologize. For EDA
7 purposes.

8 MS. MISHKIN: I'm also going to object to
9 form just on the basis that it was compound, but if
10 you need to hear it again, let him know.

11 THE WITNESS: Maybe ask again.

12 BY MR. ATKINSON:

13 Q. We're going to use February '17 as our
14 example again.

15 A. Are we back on 13?

16 Q. We are, yes.

17 So we're in Column AB, Line 14,
18 Contractor Badges. Does that say 662?

19 A. Yes.

20 Q. Going to Row 17, it says Tenant Badges.
21 Does that say 464?

22 A. Yes.

23 Q. And looking at OTB Badges, which is
24 Row 18, does it report 176?

1 A. Yes.

2 Q. If I wanted to accurately report the
3 number of non-Sears employees for EDA purposes, can
4 I just add those three numbers?

5 A. I don't know.

6 Q. Would you rely on -- if I came to you
7 and said the accurate numbers, those three numbers
8 added together, would you accept that answer at face
9 value?

10 A. Not if it was you.

11 BY MR. ATKINSON:

12 Q. That's a good answer.

13 If Mr. Meghji came to you and said
14 I'm going to report these numbers and I'm going to
15 add those three together, would you say that that
16 was an appropriate way to do that?

17 A. I would rely on what my business people
18 responsible for tracking head count came to.

19 Q. Now, you testified a moment ago that you
20 know that Ms. Argarwal reviewed these numbers and
21 there may be changes; is that correct?

22 MS. MISHKIN: Object to the form that it
23 misstates her testimony. You can answer if you can.

24

1 BY THE WITNESS:

2 A. Yes. Amita, yes. I relied on Amita.

3 BY MR. ATKINSON:

4 Q. So let me -- I'm sorry. We're covering
5 the same ground a little bit because I'm having to
6 break it apart instead of asking the ultimate
7 question.

8 So you know that Amita received
9 these numbers and did something with them; is that
10 correct?

11 MS. MISHKIN: Object to form. You need to
12 clarify what time period you're asking her about.

13 BY MR. ATKINSON:

14 Q. We're still on February '17, and that's
15 been my example month for at least an hour.

16 So for February of '17 -- and
17 actually, it frankly doesn't matter, but I'm using
18 February '17 and all my questions so far on this
19 topic have been about February '17.

20 If Mr. Meghji wanted to ask -- so
21 if Mr. Meghji came to you and said for February 2017
22 I'm going to add those three numbers and I'm going
23 to certify that number as the number of people who
24 are actually here, would you tell him that's okay?

1 MS. MISHKIN: Object to form.

2 BY THE WITNESS:

3 A. No.

4 BY MR. ATKINSON:

5 Q. Why not?

6 A. I would tell him to rely on the number
7 that is most clear that we got from the business,
8 which would have been either the EDGE report, which
9 shows that we're above without any other
10 information, or Amita if she had started tracking at
11 that point.

12 BY MR. ATKINSON:

13 Q. Okay.

14 A. Or both.

15 Q. Now, for purposes of Mr. Meghji's
16 declaration, at any point did you advise him to add
17 the numbers for OTB contractors, tenant badges, and
18 contractor badges for individual months to report
19 the number of non-Sears employees at the Hoffman
20 Estates headquarters?

21 A. No. I am not in charge of tracking head
22 count. I would not have been advising somebody
23 on -- directly on what they should do to certify the
24 number.

1 Q. All right. I'm going to -- I think
2 we're going to move on from Exhibit 2.

3 MS. MISHKIN: Do you need a break?

4 THE WITNESS: I'm good. Thank you.

5 (Oppenkowski Exhibit No. 5 marked.)

6 BY MR. ATKINSON:

7 Q. I'm going to show you what's been marked
8 Exhibit 5. This has been stamped as page number
9 Sears_EDA_000023. Do you recognize Exhibit 5?

10 A. I do.

11 Q. And what do you recognize it to be?

12 A. A notification from me to Jim Norris at
13 the Village, just letting him know that we're going
14 to be impacting some people out here as part of a
15 head count exercise and that we'll be sending him a
16 notice.

17 Q. Let me unpack that answer a little bit.
18 Who is Mr. Jim Norris?

19 A. He's the Hoffman Estates Village
20 Manager.

21 Q. And what is a WARN notice?

22 A. I mean, I'm not an HR professional, but
23 we have to give notice to certain elected officials
24 when we impact over a certain amount of associates.

1 Q. What does "impact" mean?

2 A. Impact is just the word I used for
3 sever.

4 Q. So if Sears is going to layoff or
5 disemploy individuals, then Sears needs to notify
6 certain governmental agencies; is that correct?

7 A. Yes. But let me just clarify again I am
8 not a labor attorney.

9 Q. That's fine. And I'm interested more in
10 how you understand these terms so we can understand
11 the correspondence. We don't need statutory
12 citations or anything like that.

13 And so in your e-mail to
14 Mr. Norris, you say that "We remain above the
15 threshold for EDA purposes." Is that correct?

16 A. Yes.

17 Q. And this e-mail is dated January 31,
18 2018?

19 A. Yes.

20 Q. Why was it necessary to inform --
21 actually, strike that.

22 Why did you inform the village
23 manager as to the EDA job count in January 2018?

24 A. I, as just a normal course of my job, am

1 responsible for building and maintaining
2 relationships with elected officials, obviously.
3 And so periodically I would, as a courtesy, let them
4 know, basically. Because if there was a WARN
5 notice, it would become public and the media was
6 interested in our deal, and then he could answer
7 that question if he was asked. It was not a
8 requirement. It was a courtesy.

9 Q. And had Mr. Norris asked you for that
10 courtesy or did you do it on your own accord?

11 A. I did it on my own accord.

12 Q. It says "per our discussion." That's
13 how the e-mail begins. Had you had a prior
14 conversation with Mr. Norris?

15 A. I don't recall what the details of that
16 conversation would have been or when it happened
17 that long ago.

18 Q. I'm going to show you know what's going
19 to be Exhibit 6.

20 (Oppenkowski Exhibit No. 6 marked.)

21 BY MR. ATKINSON:

22 Q. Do you recognize Exhibit 6?

23 A. Yes.

24 Q. And what do you recognize it to be?

1 A. So this was another head count exercise
2 that we did back in this time frame, and I was
3 reaching out to him about that. As normal course in
4 government affairs when we do hit count exercises,
5 even when it has no impact on a tax incentive, I
6 would reach out to local officials just so that they
7 hear it from me.

8 Q. The portion of the e-mail that's dated
9 March 8, 2017, at 1:10 a.m. -- this is at the top of
10 the page -- you report a total number that counts
11 towards the EDA; is that correct?

12 A. Yes.

13 Q. And that number is 5,500; is that
14 correct?

15 A. Yes.

16 Q. Where did that number come from?

17 A. I'm going to have to tell you I don't
18 remember exactly at this point.

19 Q. Okay. If you had to speculate? So not
20 this specific number, but in the course of your
21 duties of reporting a number, how would you go about
22 doing that?

23 A. So typically there is always two
24 different places that the numbers came from. The

1 EDGE report, which is the Sears, you know, full-time
2 people, and then somebody in real estate that would
3 have been tracking the other people.

4 Q. So sounds like I'm repeating myself, but
5 at no time did you calculate what that number was?

6 A. No.

7 Q. Again, so this is now March 8, 2017.
8 For what purpose did you inform the Village of the
9 EDA job count at this point in time?

10 A. Same answer as before. Media is
11 interested in it. I, just as a courtesy, wanted
12 them to know that we were still above the number
13 despite the head count reductions.

14 Q. Okay. We're going to go to Exhibit 7.

15 (Oppenkowski Exhibit No. 7 marked.)

16 BY MR. ATKINSON:

17 Q. If we can go back to Exhibit 6, which is
18 the March 8th e-mail. Regarding the 5,500 number,
19 how would that number have been reported to you?

20 A. I don't recall who I exactly I got it
21 from as I said before, but there were only two
22 combinations of departments, I guess, that I would
23 ever get it from. One was the EDGE report, which is
24 HR, and then the real estate team that tracks

1 everybody else.

2 Q. Would you expect that to be in the form
3 of e-mail correspondence or, like, how --
4 mechanically, how would that information have been
5 communicated to you?

6 A. Not always e-mail, no. I couldn't say
7 for sure.

8 Q. I imagine you speak with people on phone
9 calls?

10 A. Yeah. I talk to them as well, yeah.

11 Q. Were there any internal memoranda or
12 anything like that?

13 A. No.

14 Q. Turning to the Exhibit 7, do you
15 recognize Exhibit 7?

16 A. I do, but I'm sort of reading through it
17 just to remind myself.

18 Q. Take a moment to review it.

19 A. Do you guys have the press release or
20 no?

21 Q. I do, if that would help you.

22 A. That would. I have to remind myself of
23 which announcement this was.

24 Q. We're going to mark this as Exhibit 8.

(Oppenkowski Exhibit No. 8 marked.)

2 | BY MR. ATKINSON;

3 Q. I have a copy of the press release from
4 the Sears Web site if that would help as well.

5 A. Sure why not.

6 Q. I would do that as Exhibit 9.

7 (Oppenkowski Exhibit No. 9 marked.)

8 | BY MR. ATKINSON:

9 Q. Just for clarity of the record, I should
10 go in reverse order because I want to ask you about
11 the e-mail, but it sounds like you needed the
12 subsequent exhibits to refresh your memory.

13 A. Yes.

14 Q. So Exhibit 9, do you recognize that?

15 A. I do. I recognize it. I don't remember
16 in detail everything about this with everything
17 that's occurred here to date. But yes, I recognize
18 it.

19 Q. What do you recognize it to be?

20 A. So this was back in early summer after
21 our shareholder meeting, like a month after our
22 shareholder meeting when we just took some
23 significant steps, you know, to move on a positive
24 path; and it impacted a decent amount of associates.

1 Q. Is it accurate to say that Exhibit 9 is
2 a press release pertaining to the topic that you
3 just discussed?

4 A. Yes.

5 Q. Now, Exhibit 8, do you recognize that?

6 A. Yes.

7 Q. What do you recognize it to be?

8 A. An article about the EDGE tax credits.

9 Q. From Crain's Chicago Business?

10 A. Yes.

11 Q. And that's dated June 13, 2017?

12 A. Yes.

13 Q. And in reviewing those documents, does
14 that refresh your recollection pertaining to
15 Exhibit 7 which is now before you?

16 A. Yes.

17 Q. And do you now recognize Exhibit 7?

18 A. Yes.

19 Q. And what do you recognize it to be?

20 A. So, again, as a normal courtesy when we
21 put out or we do a head count exercise, which we
22 announced in our press release there was going to be
23 a decent sized one, I wanted to talk to our local
24 elected officials about that, give them a head's up.

1 Also, I wanted to correct any
2 assumptions that might come from the headline of
3 this article -- media has been very engaged in these
4 tax incentives -- to make sure they understood that
5 this was referring to the EDGE credit.

6 Q. So the portion of the e-mail chain dated
7 June 13, 2017, at 3:48 p.m., in that portion of the
8 e-mail, this is from Mr. Norris who is the village
9 manager; is that correct?

10 A. Correct.

11 Q. And is he providing guidance to you or
12 help to you? Is he making suggestions to you? Let
13 me put it that way. What is he suggesting that you
14 do?

15 A. I don't know that I should speak for
16 Jim, but I can tell you how I took it.

17 Q. That would be fantastic.

18 A. The EDA benefits and that tax incentive
19 have been very beneficial to the taxing
20 jurisdictions out here over the years. And I think
21 there was a mutual understanding that we wanted to
22 make sure that people understood that we've still --
23 we're still abiding by the things we agreed to do in
24 the EDA and that we continued to provide those

1 benefits to the taxing jurisdictions and we just
2 wanted to be on the same page.

3 Q. And I can't remember, I think we
4 clarified this, but when you say EDA, you mean
5 Economic Development Area?

6 A. The subject of this, yes.

7 Q. This e-mail is of June 2013 [sic]. Why,
8 at this point in time, was it decided that Sears
9 should inform the Village that it is still within
10 the EDA requirements?

11 A. Again, it was a courtesy that I did only
12 when we did head count exercises.

13 Q. Okay. And for purposes of this e-mail,
14 did you personally calculate the number of jobs at
15 Sears at that time?

16 A. Not personally.

17 Q. Did you talk to anybody in terms of
18 those numbers?

19 A. I always spoke with the business and the
20 people responsible for tracking head count before I
21 told him we were above.

22 Q. Do you know whether that was by e-mail?

23 A. I don't. It could have been phone
24 calls. Yeah.

1 Q. Okay. We're going to now shift back to
2 Exhibit 2, which is the declaration of Mr. Meghji,
3 and specifically we're going to look at Exhibit 14
4 of the declaration.

5 A. Okay.

6 Q. And these are -- just to lay a
7 foundation, it looks like at the top of the page
8 that this is an e-mail chain concluding with you
9 sending these materials to David Martin and copying
10 a series of people; is that correct?

11 A. Yes.

12 Q. How did you obtain the e-mails that
13 follow to send to Mr. Martin and the others?

14 A. I am one of several people that are
15 copied on Amita's e-mails. So I was copied on it.

16 Q. So I know who Mr. Martin is, but could
17 you tell us who Mr. Martin is?

18 A. He's our outside counsel in EDA matters,
19 local outside counsel.

20 Q. I believe it's Neal Gerber Eisenberg?

21 A. Right.

22 Q. So in terms of producing this e-mail,
23 did you go through your inbox and find the e-mails
24 from Amita to then forward or how did you go about

1 doing that?

2 A. Yes.

3 Q. Very straightforward answer. Very good.

4 I'm sorry. Please refresh my
5 memory. Where did Amita work?

6 A. She was in the finance department.

7 Q. Okay. And do you know what the SG&A
8 group is?

9 A. It's just a group within finance.

10 That's all I know.

11 Q. Do you know what methods were used to
12 prepare the tables in Ms. Amita's e-mails?

13 A. I don't know the methods that she used
14 as a finance professional and a numbers person, but
15 I -- she did utilize the reports from Jennifer and
16 Jon along with the EDGE report.

17 Q. And so just for clarity, Jon Bredemeier?

18 A. Yes.

19 Q. And Jennifer Mendoza?

20 A. Correct.

21 Q. So if I were looking at -- if we were to
22 look at the e-mail from Amita dated September 14,
23 2017, which is just below your e-mail, if I were to
24 ask you questions about the details of that table,

1 would you be able to answer my questions?

2 MS. MISHKIN: Object to form. I'm not sure
3 she knows what questions you're going to answer, so
4 I'm not sure how she can answer that.

5 BY MR. ATKINSON:

6 Q. So looking at December '17 in the EDA
7 forecast table, do you see where I'm referring?

8 A. Uh-huh.

9 Q. It indicates Number Eligible, and it
10 indicates 4,445; is that correct?

11 A. Yes.

12 Q. Would you be able to tell me what that
13 number means?

14 A. It's just a forecast of how many EDA
15 eligible people she thought we would have in that
16 month. A forecast.

17 Q. Would you know how that number is
18 calculated?

19 A. No.

20 Q. Would you know the assumptions that were
21 used?

22 A. No.

23 Q. The next line over says -- next column
24 says Less Attrition. If I were to ask you what that

1 number means, would you be able to tell me?

2 A. I know because she told me, but not as
3 an expert. She's just was using formulas of sort of
4 what we guessed based on prior months of just
5 natural attrition. But I'm not an expert.

6 Q. If I were to ask you how she developed
7 that assumption, would you be able to tell me?

8 A. No.

9 Q. If I were to go through each of the
10 individual columns that follow here, would your
11 answers be substantially the same?

12 A. Yes.

13 Q. Looking again at December '17, the same
14 table, December '17, in the 4,445 jobs, do you know
15 if that's an estimate?

16 A. I'm sorry. You're referring to the New
17 Hires column?

18 Q. I'm sorry. It's the Number Eligible.

19 A. That's a forecast.

20 Q. It's a forecast. Okay.

21 Can I ask how do you know it's a
22 forecast?

23 A. Because it was -- these months were -- I
24 mean it says forecast for one, but it was also

1 future months.

2 Q. Now, looking, same e-mail, above the
3 table there's bolded language that says EDA Update -
4 December 2017. Do you see that?

5 A. Yes.

6 Q. And it says -- under there, there's
7 number 1 and it says, "EDA eligible head count at
8 the end of November was 4,445." Is that correct?

9 A. Correct.

10 Q. If I were to ask you how that number was
11 calculated, would you be able to tell me?

12 A. No.

13 Q. If I were to ask you if that number
14 represented the number of employees working 35 hours
15 or more per week, would you be able to tell me
16 whether that was true or not?

17 A. It was part of the criteria she was
18 advised to use was only people 35 and up.

19 Q. But you don't know that of your own
20 knowledge?

21 A. Correct.

22 Q. And do you know what processes Amita
23 actually used to control for the number of full-time
24 employees?

1 A. No.

2 Q. So then looking at number 3 right below
3 where we just were, it says, "Based on the current
4 attrition and new hire trends, the risk still
5 remains to fall below the threshold by the end of
6 March 2018." Is that correct?

7 A. Correct.

8 Q. What do you understand that to mean?

9 A. That -- based on what it says, there was
10 a risk that we may fall below in March of 2018.

11 Q. Do you know whether that risk was
12 realized?

13 A. This whole chart here was a forecast and
14 does not represent any -- any real numbers or any
15 official certification that has been provided at
16 this point.

17 Q. Do you know whether the risk was
18 realized in March of 2018?

19 MS. MISHKIN: Object to form.

20 BY THE WITNESS:

21 A. Based on the interpretation of the
22 statute and without any official certification, I do
23 not believe that was realized.

24

1 BY MR. ATKINSON:

2 Q. But do you know?

3 A. Again, I am not in charge of tracking.

4 There has been no official number generated nor any
5 requirement for us to provide that, but I will tell
6 you that I see some numbers and that we did not
7 realize that based on what I've seen as a
8 non-expert.

9 Q. Okay. Have you had communications with
10 the Village of Hoffman Estates concerning the number
11 of jobs in 2018?

12 A. No. Let me just say, though, I'm not
13 sure because we're in 2019 now. I just want to be
14 clear. If there was a head count exercise in 2018
15 and I mentioned to Jim we were still above over the
16 phone, that may have occurred. But right off the
17 top of my head, I don't remember if there was --
18 same thing. It would have been a courtesy call.
19 But I can tell you that I've never made a call to
20 him saying we're below.

21 Q. Okay. I want to take you to -- so this
22 is going to be the last page of Exhibit 14. And I
23 apologize. This e-mail is split between two pages.
24 So at the bottom of the previous page, it indicates

1 this was an e-mail dated October 16, 2017. At the
2 top of the next page do you see where it says Next
3 Steps --

4 A. Yes.

5 Q. -- in bold? And it says, "In order for
6 us to secure this credit, we need to find more
7 tenants and rent out some of the underutilized space
8 at the campus. Please advise if we should step up a
9 meeting to discuss strategies and progress." Is
10 that correct?

11 A. Yes.

12 Q. Do you know whether there were any
13 meetings set up to discuss strategies and progress?

14 A. Yes.

15 Q. When were those meetings?

16 A. I was not at them. I just know they
17 occurred.

18 Q. Do you know what the purpose of those
19 meetings were?

20 A. I know they were meeting just to sort of
21 monitor the numbers and to see if they could, you
22 know, lease more space and get more tenants and more
23 jobs out here. But I was not in the meetings.

24 Q. So if I can clarify your testimony, are

1 you saying there is no official report regarding EDA
2 compliance for 2017?

3 MS. MISHKIN: Object to form.

4 BY THE WITNESS:

5 A. There's no official report required to
6 my knowledge.

7 BY MR. ATKINSON:

8 Q. So if you were to answer the question,
9 is there were an official report, what would your
10 answer be?

11 A. Define official.

12 Q. Well, I'm using your language because
13 earlier before when I was asking you about
14 Exhibit 13 and the occupancy report that would go to
15 Amita and then Amita would do whatever Amita did and
16 then there would be a final report after that?

17 A. Right. But that could have been just to
18 call and say, "Here's the number." There's no
19 requirement. I'm not an attorney. As far as I
20 know, there's no requirement in the statute that we
21 produce an official written report that's consistent
22 or anything like that. So that's what I meant by
23 that.

24 That was my internal, that's not the

1 official number. But I wasn't trying to suggest
2 that there is an official report that was generated
3 for official use with officials, local officials or
4 anything like that.

5 Q. Would Amita's final report be reduced to
6 writing?

7 A. I think what you see in writing on these
8 e-mails is what I have received. So there are
9 places where she says this is what the number was in
10 this month, and that month has passed. So that's
11 more official than, say, the forecast documents.

12 Q. Okay. Do you think there would be a
13 memorandum or any other writing somewhere in Sears
14 that would have Ms. Argarwal's reconciliation
15 between the daily occupancy report and her final
16 report?

17 MS. MISHKIN: Object to form.

18 BY THE WITNESS:

19 A. I provided the documents that I found
20 from Amita, and I provided them.

21 BY MR. ATKINSON:

22 Q. Okay. Do you know whether she created a
23 reconciliation between the data occupancy report and
24 her final report?

1 A. She had included in the e-mails Excel
2 spreadsheets and things of that nature, but I was
3 not a party to those. I did not regularly get sent
4 anything other than her final report that went to
5 this group of people that's on the e-mails.

6 Q. So sitting here today, do you know
7 whether there are any reconciliations?

8 A. No.

9 Q. Okay. Do you know approximately when
10 Amita left Sears?

A. I don't recall.

12 Q. Do you know -- since her departure, do
13 you know who has been performing her work pertaining
14 to the jobs count exercises?

15 A. I do not.

16 Q. Have you seen reports regarding jobs
17 count exercises since her departure?

18 A. No.

19 MR. ATKINSON: Would it be okay to take a
20 break?

21 | (Break taken.)

22 BY MR. ATKINSON:

23 Q. So before the break, you mentioned that
24 that for 2018, based on information that you've

1 seen, that Sears is in compliance with the EDA act
2 for 2018; is that correct?

3 A. Just to clarify, for the entire year?

4 Q. Yes.

5 A. Based on what I've seen and
6 interpretation from attorneys, yes.

7 Q. And so can you detail for us what you
8 have seen?

9 A. Again, none of these -- I'm going to use
10 the word you don't like me using, but officially
11 just from an internal perspective, because we've not
12 been asked to file a certification, none of that
13 actual work has been done. But same places I always
14 see it, so EDGE report plus real estate information.

15 Q. Okay. If -- so hypothetically
16 speaking -- because this is an issue that is in
17 dispute in this litigation, so hypothetically
18 speaking, I'm not asking you whether this is
19 actually the case, but in the context of the
20 hypothetical whether this would be true. For 2018,
21 if the number of tenants, contractors, and OTB
22 contractors were removed from the count, would Sears
23 be in compliance with the EDA requirements?

24 MS. MISHKIN: I object to the form asking a

1 hypothetical of a fact witness, but if you can
2 answer, you can answer.

3 THE WITNESS: So based on how you asked, that
4 would leave the Sears-only full-timers, correct?

5 BY MR. ATKINSON:

6 Q. That's correct.

7 A. So using that scenario, we would be
8 below as indicated through our public announcements
9 on the other tax credit.

10 Q. Same hypothetical for but 2017.

11 MS. MISHKIN: Same objection.

12 BY THE WITNESS:

13 A. Again, we publicly dropped below on the
14 Sears-only calculation -- I believe I know the exact
15 date, May 31, 2017 -- without the contractors, the
16 tenant, anybody else who is working in this
17 building.

18 MR. ATKINSON: We have no further questions.

19 MS. MISHKIN: Thank you.

20 MR. FLOREY: Thank you for your patience.

21 FURTHER DEPONENT SAITH NAUGHT...

22 * * * * *

23
24

1 STATE OF ILLINOIS)
2) ss:
3 COUNTY OF C O O K)

4 The within and foregoing deposition of the
5 aforementioned witness was taken before ELISABETH D.
6 COLLOPY, C.S.R., R.P.R., and Notary Public, at the
7 place, date and time aforementioned.

8 There were present during the taking of the
9 deposition the previously named counsel.

10 The said witness was first duly sworn and was
11 then examined upon oral interrogatories; the
12 questions and answers were taken down in shorthand
13 by the undersigned, acting as stenographer and
14 Notary Public; and the within and foregoing is a true,
15 accurate and complete record of all of the questions
16 asked of and answers made by the aforementioned
17 witness, at the time and place hereinabove referred
18 to.

19 The signature of the witness was not waived,
20 and the deposition was submitted, pursuant to
21 Rules 30 (e) and 32 (d) of the Rules of Civil
22 Procedure for the United States District Court, to
23 the deponent per copy of the attached letter.

24

1 The undersigned is not interested in the
2 within case, nor of kin or counsel to any of the
3 parties.

4 IN WITNESS WHEREOF I have hereunto set my
5 hand this 12th day of April, 2019.

6
7 
8 ELISABETH D. COLLOPY, CSR, RPR
CSR No. 084-004192

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: SEARS HOLDING)
CORPORATION, et al.,)
Debtor,) Case No. 18-23538(RDD)

I, MISTY REDMAN OPPENKOWSKI, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken on April 12, 2019; that I have read the foregoing transcript of my deposition, consisting of pages 1 through 77 inclusive, and affix my signature to same.

MISTY REDMAN OPPENKOWSKI

16 Subscribed and sworn to
before me this _____ day
17 of _____, 2019.

Notary Public

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